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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: VOLKSWAGEN "CLEAN DIESEL"
MARKETING, SALES PRACTICES, AND
PRODUCTS LIABILITY LITIGATION

Master File No. 3:15-md-02672-CRB
MDL No. 2672

This Order Relates To:

ALL ACTIONS

**RESPONSE OF HAUSFELD LLP TO
PARAGRAPH 11 OF THE COURT'S
PRETRIAL ORDER NO. 1**

Pursuant to paragraph 11 of this Court’s “Pretrial Order No. 1” (Dec. 9, 2015), the Hausfeld firm, which has filed several consumer class action suits against Volkswagen alleging claims under Section 2 of the Sherman Act (15 U.S.C. § 2), the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1962(c), 1964), the Magnuson-Moss Warranty Act (15 U.S.C. § 2301 *et seq.*), and state statutory and common law, hereby recommends that Kenneth R. Feinberg serve as Settlement Master in this litigation. If the Court believes that he should work with additional Settlement Masters, HLLP recommends; (a) former District Court Judge Layn R. Philips; (b) retired Chief Magistrate Judge Edward A. Infante; (c) United States Magistrate Judge Jacqueline S. Corley, who has already been assigned to this case; and (d) retired Judge Rebecca Westerfield.

Mr. Feinberg is extraordinarily well qualified for this task. He served as Special Master of the United States government’s September 11th Victim Compensation Fund, was later appointed as Special Master for the TARP Executive Compensation Initiative and, in June of 2010, was named to oversee the BP Deepwater Horizon Disaster Victim Compensation Fund, a \$20 billion fund created to pay claims resulting from British Petroleum’s Gulf Oil spill. Among the other well known cases with which he has been involved are the *General Motors Ignition Switch Litigation* (where he administered the Compensation Program), the *Foreign Exchange Benchmark Rates Antitrust Litigation* (where he has mediated settlements of over \$2 billion to date), and the *Agent Orange Product Liability Litigation*. The *National Law Journal* has referred to Mr. Feinberg as “the leader in mediation and alternative dispute resolution.” He has also created Strategic Settlement Advisers, Inc., which assists in the design, implementation and administration of the settlement agreements. All of this is set forth on his website. <http://www.feinberglawoffices.com>.

The Court has personal experience with Mr. Feinberg from the *In re International Air Transportation Surcharge Antitrust Litig.*, No. M:06-cv-01793-CRB (N.D. Cal.) (“*Air Passenger*”), where he served as mediator of the settlements with British Airways Plc and Virgin Atlantic Airways, Ltd. and as claims administrator.

1 Hausfeld respectfully submits that Mr. Feinberg would be an excellent choice as the
2 Settlement Master in this litigation.

3 If the Court is disposed appoint more than one Settlement Master (given the scope of this
4 case), HLLP recommends that four other individuals are excellent candidates to serve in that
5 role.

6 One is former District Court Judge Layn Philips, who had been selected previously by the
7 courts in the Eastern District of Michigan and the District of New Jersey to serve as a mediator in
8 the Volkswagen Clean Diesel cases then pending in those respective districts, all of which have
9 been now transferred to this Court. “Order Appointing The Honorable Layn R. Phillips And The
10 Honorable Steve W. Rhodes As Masters For Expedited Settlement Negotiations” (Oct. 22, 2015)
11 (Dkt. No. 14) in *In re: Volkswagen “Clean Diesel” Cases*, Case No. 15-13360 GER-APP (E.D.
12 Mich.); “Order Appointing The Honorable Layn R. Phillips And The Honorable Faith S.
13 Hochberg As Masters For Expedited Settlement Negotiations” (Oct. 23, 2015) (Dkt. No. 31) in *In*
14 *re: Volkswagen “Clean Diesel” Cases*, No. 15-7012 (JLL)(JAD) (D.N.J.).

15 Another candidate whom the Court should consider as an additional Settlement Master is
16 Magistrate Judge Jacqueline S. Corley. She is highly respected within this district for her superb
17 work as a settlement judge. HLLP has dealt with her in that capacity in *In re Cathode Ray Tube*
18 *(CRT) Antitrust Litig.*, No. 3:07-cv-05944-JST (N.D. Cal.) and *In re Optical Disk Drive Prods.*
19 *Antitrust Litig.*, No. 3:10-md-02143-RS (N.D. Cal.) and can attest to the skill and
20 professionalism she exhibited in both matters. With respect to Magistrate Judge Corley, Federal
21 Rule of Civil Procedure 53(h) contemplates that a magistrate judge may be appointed as a special
22 master. *See, e.g.*, D. Mass. Magistrate Judge Rule 4(a) (“[a] magistrate judge may serve as a
23 special master subject to the procedures and limitations of 28 U.S.C. Section 636(b)(2) and Fed.
24 R. Civ. P. 53.”). *See also id.* Rule 4(b) (“[w]ith the consent of the parties and the approval of the
25 district judge to whom the case has been assigned, a magistrate judge may serve as special
26 master in any civil case without regard to the provisions of Fed. R. Civ. P. 53(b).”).

27 A third candidate whom the Court should consider is Retired Chief Magistrate Judge
28 Judge Edward A. Infante, formerly the Chief Magistrate Judge in this District and now a neutral

at JAMS, who has conducted over 3,000 settlement conferences.

<http://www.jamsadr.com/infante/>. Judge Infante issued the declaration submitted to this Court in support of the settlements with United Airlines and American Airlines in the *Air Passenger* case.

A final candidate is Retired Judge Rebecca Westerfield, who is also a neutral at JAMS. She serves on the Northern District of California's ADR Panel and has presided over 2,500 domestic and international arbitrations. <http://www.jamsadr.com/westerfield/>.

Dated: December 16, 2015

HAUSFELD LLP

By: /s/ Michael P. Lehmann

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CERTIFICATE OF SERVICE

I, Michael P. Lehmann, declare that I am over the age of eighteen (18) and not a party to the entitled action. I am a partner in the law firm of HAUSFELD LLP, and my office is located at 600 Montgomery Street, Suite 3200, San Francisco, California 94111.

On December 16, 2015, I caused to be filed the following:

**RESPONSE OF HAUSFELD LLP TO PARAGRAPH 11 OF THE COURT'S
PRETRIAL ORDER NO. 1**

with the Clerk of the Court of the United States District Court for the Northern District of California, using the official Court Electronic Document Filing System which served copies on all interested parties registered for electronic filing.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Michael P. Lehmann

Michael P. Lehmann